

JAN 22 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MALCOLM L. GREEN,

Defendant - Appellant.

No. 06-10236

D.C. No. CR-03-00448-JCM/PAL

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted January 14, 2008^{**}

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

Malcolm L. Green appeals from the district court's order denying his motion for resentencing following limited remand under *United States v. Ameline*, 409

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

We conclude that the government has forfeited its right to enforce Green's appeal waiver because the government failed to raise the argument during Green's initial appeal. *See United States v. Garcia-Lopez*, 309 F.3d 1121, 1123 (9th Cir. 2002).

Green contends that the sentence is too high in light of the factors set forth in 18 U.S.C. § 3553(a) and that the district court failed on remand to adequately discuss the § 3553(a) factors. These contentions are unreviewable. *See United States v. Combs*, 470 F.3d 1294, 1297 (9th Cir. 2006).

AFFIRMED.